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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,750	11/21/2003	Mogens N. Olesen	EVlpo001	3683
7590 03/08/2004				
Poulsen Roser A/S 620 South Front Street Central Point, OR 97502				
EXAMINER				
BELL, KENT L				
ART UNIT		PAPER NUMBER		
1661				
DATE MAILED: 03/08/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/719,750

Applicant(s)

OLESEN ET AL.

Examiner

Kent L. Bell

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

*application filed 11/21/03*

- 1) ☒ Responsive to ~~communication(s) filed on~~ \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/~~are~~ pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/~~are~~ withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/~~are~~ allowed.
- 6) ☒ Claim(s) 1 is/~~are~~ rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/~~are~~ objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/21/03 is/~~are~~: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

*K. L. Bell*

**Detailed Action**

**Objection to the Disclosure**

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

**35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

### Detailed Action

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, line 7, Applicants state "Section – *viticella*". "*viticella*" is not a recognized section it is a recognized species. It appears applicant may have intended to state --Species-- rather than "Section". Correction and/or clarification is necessary.

B. Page 5, line 5, Applicants state "of the applicant". It appears applicants may have intended to state --'EVIpo001'--. Correction and/or clarification is necessary.

**Detailed Action**

C. Page 6, line 12, The second period should be deleted.

D. Page 7, line 5, Rather than stating “sepal”, applicants should state --tepal-- as this is the more proper biological term to use for this characteristic.

E. Page 7, line 5, Applicants state “reverse”. This recitation is unclear as it is not understood what applicant intends “reverse” to mean. It appears applicant may intend “reverse” to mean “undersurface”. If such is accurate then such should be stated in the specification to avoid confusion.

F. Page 7, line 16 to page 8, line 4, Applicants should set forth in the specification additional information relative to the instant plant’s tepals including the typical and observed tepal base descriptor and coloration (both surfaces) with reference to the employed color chart.

It is noted that applicants have set forth a coloration at lines 1-3 of page 7. However, it is uncertain if these colorations set forth are for tepal coloration, flower coloration, or something else. Applicants should set forth in the specification under the “Tepals” subheading tepal colorations as set forth above.

**Detailed Action**

G. Page 8, line 25 to page 9, line 1, Applicants should set forth in the specification the typical and observed plant spread or diameter.

H. Page 9, line 25, and page 10, line 1, Applicants set forth a leaf size but it is unclear whether the size set forth is for the entire leaf or a single leaflet. Applicants should set forth in the specification the typical and observed leaf and leaflet length and diameter.

I. Page 10, line 9, Applicants set forth a petiole size. However, it is unclear whether the dimension set forth is for the length, diameter, or something else. Applicants should set forth in the specification the typical and observed petiole length.

J. Applicants should set forth a new claim such as --A new and distinct variety of Clematis plant, substantially as herein shown and described.-- as the specification already contains the descriptive information set forth in the current claim. Further, the claim suggested above encompasses the entire plant in which its characteristics have been set forth in the specification (i.e. described). Therefore, adding more detail than what is in the claim suggested above is unnecessary.

**Detailed Action**

K. Abstract, line 8, Applicants should insert --asexual-- before “propagation” to clearly set forth the type of propagation done (Page 3, line 10).

L. Applicants should number the pages of the specification sequentially, followed by the Claim and abstract.

The above listing may not be complete. Applicants should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

**Claim Rejection**

**35 U.S.C. 112, 1st & 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

**Comments**

Applicants should note the new amendment format which is now mandatory (Web site stated below).

**Detailed Action**

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/revamdtprac.htm>

Applicants should send all correspondence to the following address:

COMMISSIONER FOR PATENTS  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450

**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (571) 272-0974.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

K. L. Bell

**KENT BELL  
PRIMARY EXAMINER**

*Kent L. Bell*